

Table of Contents

CHAPTER 4.0	THE EFFECTIVENESS OF HCFA'S CURRENT NURSING HOME NON-RATIO NURSE STAFFING REQUIREMENTS	4-1
4.1	Introduction	4-1
4.2	Survey Types and Process	4-2
4.3	Applicable Requirements	4-3
4.3.1	Statutory Requirements	4-3
4.3.2	Current Regulations	4-3
4.3.3	Registered Nurse Regulations	4-5
4.3.4	State Requirements	4-6
4.4	The State Operations Manual	4-6
4.4.1	Survey Process Prior to the July 1999 Changes to the State Operations Manual	4-6
4.4.2	Survey Process Changes to the State Operations Manual, Appendix P on July 1, 1997	
4.4.3	The Investigative Protocol	4-7
4.5	Factors Influencing Review of Staffing During Survey	4-8
4.6	Quantitative Analysis of Staffing Deficiencies	4-9
4.6.1	Purpose	4-9
4.6.2	Data Sources - OSCAR	4-9
4.6.3	Analysis Questions	4-10
4.7	Qualitative Analysis of Staffing Deficiencies	4-16
4.7.1	Sample Selection for Content Analysis of HCFA Form 2567	4-16
4.7.2	Review Process and Criteria Used to Review Deficiencies	4-17
4.7.3	Documentation of Nurse Staffing Deficiencies at F353: Sufficient Staffing	4-18
4.7.4	Documentation of Nurse Staffing Deficiencies Sited at F354: Registered Nurse	4-28
4.7.5	Qualitative Analysis of Deficiencies Issued After SOM Changes	4-29
4.8	Conclusion	4-29

CHAPTER 4.0 THE EFFECTIVENESS OF HCFA'S CURRENT NURSING HOME NON-RATIO NURSE STAFFING REQUIREMENTS¹

4.1 Introduction

Apart from the results of the quantitative analysis presented in Chapters 9 through 12, any recommendation regarding a minimum nurse ratio requirement will make explicit or implicit assumptions about how HCFA's current nursing home nurse staffing (non-ratio) requirements are working in practice. As will be discussed in greater detail in Chapter 6, one of the difficulties in setting a minimum ratio requirement is that no analysis conducted to date has been able to derive appropriate minimums that adjust for differences among facilities in the acuity and functional limitations in their resident populations. Given these circumstances, surveyors have difficulty in applying the current regulation for sufficient staff in which they must identify a failure to meet resident needs and determine if there is sufficient staff to meet those needs. As we shall see below, this is a very difficult judgement for surveyors. This difficulty may be due in part to the need for in-depth reviews, the cumbersome survey process, and limited time to complete the survey.

The purpose of this chapter is to determine how the current non-ratio requirements are being implemented and assessed. Recent July 1, 1999, State Operations Manual (SOM) revisions incorporated an investigatory protocol related to nurse staffing. This analysis will also address the impact that the SOM revisions may have had on the implementation of staffing requirements by surveyors.

Although the current staffing requirements will be discussed in more detail below, as noted in Chapter 1, the Social Security Act (The Act) mandates certain nurse staffing requirements in long term care (LTC) facilities. The *general* requirement is that staffing must be sufficient to meet the needs of nursing home residents. Many professionals view this general requirement, when implemented in practice, as too vague to serve as an adequate Federal standard. There are also specific *minimum* requirements of 8-hours registered nurse and 24-hours licensed nurse coverage per day. However, since this minimum is the same for all facilities (e.g., the same for a 60 bed facility or a 600 bed facility) many professionals also view this requirement as inadequate; they argue for a required minimum nurse staffing to resident *ratio*. In addition, many professionals recommend minimum nurse staffing ratios that would be adjusted upward for nursing homes with residents who have greater care needs, such as patients who suffer from Alzheimer's Disease and others with fragile medical conditions. In response to this concern, an

¹ This chapter was completed by current and former HCFA staff including Beverly Cullen, Rosemary Dunn, Marvin Feuerberg, Kathryn Hagerman, Ed Mortimore, and Ray Wedgeworth. Additional editorial assistance was provided by Sally Jo Wieling and Jeane Nitsch, both from HCFA.

increasing number of States are mandating higher levels of nurse staffing under their State licensing authority (see Chapter 2).

The analysis in this chapter will be largely descriptive of the current system with a before/after design to determine the impact, if any, of the recent changes to the SOM survey guidelines in this area. The first section will initially review the State Survey Process. It will then discuss statutory and regulatory requirements and the “Guidance to Surveyors - Long Term Care Facilities” (The Guidelines). Following this background discussion, the results of two analyses will be presented: 1) an analysis of nurse staffing citations, before and after the SOM changes; 2) an analysis of HCFA Form 2567, “Statement of Deficiencies and Plan of Correction” as they relate to the reporting of staffing deficiencies, including an assessment of the content of the citations in relation to the regulatory language; additionally, the analysis of 2567 forms will provide some limited attention to the potential impact of the recent SOM changes.

4.2 Survey Types and Process

The State Agency (SA) overseeing licensing and certification of facilities is required to conduct annual unannounced surveys at LTC Facilities to determine compliance with Federal regulations. The Code of Federal Regulations (CFR) at 42 CFR 488.301 defines the type of surveys that SAs conduct, such as Standard, Abbreviated Standard Surveys, Extended, and Partial Extended Surveys. These survey types are as follows:

- 1) The survey conducted by the SA annually begins as a resident-centered, outcome-oriented Standard Survey. This survey gathers information about the quality of services furnished and whether the facility complies with participation requirements to meet the needs of each resident.
- 2) An Abbreviated Standard Survey, which may be conducted as a result of complaints received, or as a result of change in ownership, management or director of nursing focuses on a particular area of concern(s).
- 3) If during the course of either of these two types of surveys, the surveyors identify substandard quality of care, the survey agency must conduct an Extended or Partial Extended Survey. During an Extended or Partial Extended Survey, in addition to other requirements, nurse staffing must be reviewed.

The statute and regulations require that a survey be conducted by a multidisciplinary group of health professionals such as dietitians, pharmacists, and nurses. The survey team is required to include at least one registered professional nurse. Depending upon the survey findings, complexity of the facility services and structure, distance and travel time, a survey with three to four surveyors for a 100 bed facility, on average, is scheduled to be completed in four days. Surveyors must identify the potential for

negative outcomes, actual negative outcomes, and the facility's culpability. If the surveyor identifies an actual or potential negative outcome of a resident(s), emphasis is placed on identifying the specific requirement in the areas of quality of care or quality of life where the facility is deficient.

A survey provides a relatively small window of opportunity to complete the tasks required to evaluate a facility for compliance with the regulations. The standard survey process requires surveyors to conduct both comprehensive and focused reviews of a specific number of residents based on the size of the facility. There are numerous tasks which surveyors must complete in this short period of time. They must gather required information including observation of delivery of care; evaluation of quality of life; nutritional needs, and medication administration, in addition to assessing environmental safety and accommodation of residents' specific needs. Surveyors must also conduct resident council and staff interviews. Surveyors conduct record reviews to determine whether staff evaluated the resident's needs and/or recognized, evaluated and intervened when a resident experienced a change in condition. This process is complex and includes a need to clarify information by talking with facility staff, residents, and/or their families or representatives. Prior to the end of the survey, the team must also review and evaluate their own findings to determine the facility's compliance or non-compliance with the requirements for long term care facilities.

4.3 Applicable Requirements

This section will provide an overview of the current Federal requirements on nurse staffing for Long Term Care (LTC) Facilities. The Survey Agency surveys LTC facilities to determine compliance with these standards.

4.3.1 Statutory Requirements

The Omnibus Budget Reconciliation Act of 1987 provided amendments to The Act for Skilled Nursing Facilities (SNF) and Nursing Facilities (NF). The statutory language throughout The Act places emphasis upon providing the scope of care and services, including *sufficient* qualified staff for a resident residing in a LTC facility to assure that each resident can attain and maintain his/her *highest practicable* physical, mental, and psychosocial well-being. The law does not define "sufficient" or "highest practicable" (See Appendix C2 for excerpt from The Act).

Federal regulations regarding sufficient staffing were written to reflect the statutory requirements of The Act.

4.3.2 Current Regulations

4.3.2.1 Sufficient Staff Regulations

Currently, the CFR requires the following provision of “sufficient staff” (which includes nursing assistants) to meet the needs of the residents: the provision of 24-hour licensed staff; the designation of a charge nurse per shift; the requirement for a registered nurse (RN) eight hours a day, seven days a week; and the designation of a Director of Nurses. The requirements are not based on size of facility or the acuity levels of the residents. The requirements for LTC facilities do not mandate a specific ratio of nursing staff to residents. The following is an excerpt from the CFR:

42 CFR 483.30: Nursing Services:

The facility must have sufficient nursing staff to provide nursing and related services to attain or maintain the highest practicable physical, mental and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care.

(a) Sufficient staff

(1) The facility must provide services by sufficient numbers of each of the following types of personnel on a 24-hour basis to provide nursing care to all residents in accordance with resident care plans:

(i) Except when waived under paragraph (c) of this section, licensed nurses; and

(ii) other nursing personnel.

(2) Except when waived under paragraph (c) of this section, the facility must designate a licensed nurse to serve as a charge nurse on each tour of duty.

4.3.2.2 Intent of Sufficient Staff Regulations

The intent of the requirement as described in The Guidance to Surveyors at tag F353 (sufficient staff) is as follows:

...to assure that sufficient qualified nursing staff are available on a daily basis to meet residents’ needs for nursing care in a manner and in an environment which promotes each resident’s physical, mental and psychosocial well-being, thus enhancing their quality of life...At a minimum, ‘staff’ is defined as licensed nurses (RNs and/or LPNs/LVNs), and nurse aides. ...the determining factor in sufficiency of staff (including both numbers of staff and their qualifications) will be the ability of the facility to provide needed care for residents. A deficiency concerning staffing should ordinarily provide examples of care deficits caused by insufficient quantity and

quality of staff. If, however, inadequate staff (either the number or category) presents a clear threat to residents reaching their highest practicable level of well-being, cite this as a deficiency. Provide specific documentation of the threat.

Thus, the burden is on the surveyors to determine if the facility has appropriately provided care and services to facilitate the residents maintenance or achievement of his/her highest practicable level of functioning. If residents' needs are not being met, the surveyor must determine whether this is because of a lack of sufficient staff. The surveyor must also determine whether the facility provides for 24-hour licensed coverage and whether a charge nurse is designated per shift.

4.3.3 Registered Nurse Regulations

Current Federal regulations mandate a minimum level of RN coverage. The regulations also provide limited circumstances defining when a waiver of those minimums may be granted. The following is an excerpt from the CFR explaining the minimum level:

42 CFR 483.30

(b) Registered Nurse.

- (1) Except when waived under paragraph (c) or (d) of this section, the facility must use the services of a registered nurse for at least 8 consecutive hours a day, 7 days a week.
- (2) Except when waived under paragraph (c) or (d) of this section, the facility must designate a registered nurse to serve as the director of nursing on a full time basis.
- (3) The director of nursing may serve as a charge nurse only when the facility has an average daily occupancy of 60 or fewer residents.

42 CFR 483.30 paragraphs (c) and (d) provide specific criteria that must be met prior to the HCFA or State approval of a waiver request.

4.3.3.1 Explanation of Registered Nurse Regulations

In a facility with an average daily occupancy of 60 or fewer residents, one RN could fulfill multiple aspects of the staffing requirements. For example, a full-time RN (a single RN or two RNs job-sharing to fill a full-time RN position) could work as the Director of Nurses (DON) and the charge nurse on the floor. In doing so, the RN could meet the requirement for a Director of Nursing, the requirement for a

charge nurse, the requirement for provision of eight hours registered nurse staffing (five days of the seven days required) and a portion of the provision of the 24-hour a day licensed nurse coverage.

One RN in a 200 bed facility could, theoretically, also fulfill multiple aspects of the staffing requirements. Although the DON cannot function as a charge nurse in a facility with an average daily occupancy of more than 60 residents, the DON could meet the requirement to provide RN coverage eight hours a day, five of the required seven days. In this scenario, a licensed nurse would have to be designated as charge nurse on each shift. Since the licensed nurse coverage (24-hours a day) in the regulation does not specify that an RN must be on duty 24-hours a day, a licensed practical/vocational nurse (LPN/LVN) may be used.

4.3.4 State Requirements

As described in more detail in Chapter 2, some States have mandated baseline staffing ratios and/or acuity based case-mix staffing requirements. If the survey is a dual survey (State licensing and Federal Certification), State surveyors are required to calculate the staffing based on State licensing requirements during the course of their survey. Surveyors have reported repeatedly throughout the past few years, that it is easier to calculate State specified staffing hours or ratios to identify deficits in numbers of staff, than to substantiate the Federally defined lack of adequate staffing based upon lack of care.

4.4 The State Operations Manual

4.4.1 Survey Process Prior to the July 1999 Changes to the State Operations Manual

Prior to July 1, 1999, the survey process did not specifically require a review of staffing. Instead, the survey process included a list of 20 requirements (including requirements for nurse staffing) from which the survey team was required to select two for review during the survey. Hence, a review of staffing during a standard survey was optional and would have been based upon the survey team's decision to include the staffing requirements as one of the two optional required reviews. Surveyors were provided guidance that suggested selection of the areas for review should be based upon findings during the survey; however, the survey process did not require that staffing schedules, sign in sheets, and time cards be routinely reviewed for consistency, accuracy, or for compliance with the requirement for licensed staff coverage.² Surveyors were always instructed that they could investigate any area in which

² The staffing schedule refers to a means by which facility documents the date, shift or time and location staff are to report for work. As the needs of the facility and its residents and staff change, the schedule can be changed. Employees on the schedule are usually delineated by their profession, e.g., Registered Nurse, Licensed Practical/Vocational Nurse or Nurse Aide. In addition, the schedule usually has notations when employees are not working due to illness, vacations, holidays and other reasons for absence and the names of the agency or other individuals or employees substituting for the absent employee.

they believed the facility may not be meeting a requirement. If substandard quality of care was identified, the survey team was required to conduct an extended survey which requires a review of staffing.

4.4.2 Survey Process Changes to the State Operations Manual, Appendix P on July 1, 1999

The Senate Special Committee on Aging held hearings in July 1998 to address the issues of abuse, neglect of care, pressure sores, dehydration and weight loss which were identified as problems in some of the nation's nursing homes. In response to these issues and in conjunction with HCFA's own plans to continually enhance the survey process, HCFA implemented several survey process changes in July 1, 1999. The survey process was revised to include defined investigative protocols. In addition to the protocols developed for assessing resident care outcomes, an investigative protocol was developed to review nursing staffing to determine if identified care deficiencies were caused by a lack of sufficient nursing staff in the facility.

Another survey change involved requiring surveyors to determine if sufficient licensed nurses were present in the facility when the surveyors first arrived at the facility, unless the facility had a nursing staff waiver in place. The survey process now includes a request for a copy of the staffing schedule for licensed staff upon the surveyors entering a facility. This is done to assure that the requirement for licensed staff 24 hours a day is met and in place upon entry into the facility. As the surveyors tour the building, they are to determine if the nurses scheduled are present and in the building, or in the case of illness or other absences, that the facility has made appropriate adjustments to assure that licensed staff is present.

These changes to the survey process in the form of SOM directives, were implemented on July 1, 1999, and training was provided at four sessions held around the nation in the Spring of 1999 for State and Federal Survey Agencies and provider organizations. These survey changes have also been added to the Long Term Care Basic Surveyor Training course. In addition, each of the ten HCFA Regional Offices conducts Federal Oversight and Support Surveys to audit the Survey Agencies' implementation of the survey process, including the use of the staffing protocol as discussed below in further detail.

4.4.3 The Investigative Protocol

The objectives of the Investigative Protocol for Nursing Services/Sufficient Staff are to determine if the facility has sufficient nursing staff available to meet the residents' needs and to determine if the facility has licensed registered nurses and licensed nursing staff available to provide and monitor the delivery of resident care. There are specific instructions for when the protocol is to be used. The protocol is not required during the standard survey, unless it is triggered by care concerns, complaints, or identified problems. It is required to be completed for an extended survey. (See Appendix C-3 for text from the

investigative protocol.) The investigative protocol, which defines procedures to be used for determining sufficiency of staff, is triggered when problems with the quality of care such as the following have been identified: Residents are not receiving the care and services to prevent pressure sore/ulcer(s), to prevent unintended weight loss or dehydration, or to prevent declines in their functional status such as: bathing, dressing, grooming, transferring, ambulating, toileting, and eating; complaints have been received from residents, families, or other resident representatives concerning services such as: care not being provided, call lights not being answered in a timely fashion, and residents not being assisted to eat; or residents have not received the interventions defined in their care plans.

Instructions to surveyors on how to determine compliance are also provided in the protocol. The protocol states, "Meeting the State mandated staffing ratio, if any, does not preclude a deficiency of sufficient staff if the facility is not providing needed care and services to residents. Compliance with 42 CFR 483.30(a), F353, Sufficient Staff: The facility is compliant with this requirement if the facility has provided a sufficient number of licensed nurses and other nursing personnel to meet the needs of the residents on a twenty-four hour basis. If not, cite F353."

4.5 Factors Influencing Review of Staffing During Survey

Several factors, both objective and perceptual (those reported without objective substantiation), have had a significant impact upon the review of staffing and subsequent identification of staffing deficiencies despite the implementation of the investigative protocol. Surveyors have repeatedly recounted instances where administrative staff are performing direct care in contrast with their usual job responsibilities or per diem agency staff or staff from a sister facility are being brought in to supplement the regular staff during the survey. Surveyors have reported to HCFA Central Office staff that when they did review schedules or question coverage by licensed staff, the facility would assert that some of the licensed staff and/or corporate staff were present but were salaried and would not appear on the schedule or have a time card. Surveyors relate feedback from residents, family and some staff about the unusual number or attentiveness of staff during the survey. An example of this practice documented in a deficiency is as follows:

"Although additional staff were added to the shifts when surveyors were present, cares were not provided as needed for all residents... The surveyor staff entered the facility at 1:30 p.m.. The administrator and director of nurses were asked to provide the surveyors with the staff that was scheduled to work the evening shift. Surveyors also requested and received the master schedule... Facility staff reported that there was one licensed practical nurse (LPN) and four CNAs {Certified Nursing Assistants} scheduled to work on one station... During observations of resident care for this evening shift it was noted that the scheduled one LPN and four CNAs were all on duty providing resident care. In addition to these staff the director of nurses, administrator, nursing administrator, a LPN from day shift, and an unscheduled CNA were also providing care to the residents on the one station during the entire evening of

observation. [The next day] at 5:00 p.m. when the surveyors entered the facility, the following staff were on duty on the station, one registered nurse (RN) and four CNAs. Within 30 minutes after the surveyors arrived, the following unscheduled staff had arrived and began assisting residents on the north station: the administrator, a LPN, and three CNAs.”

Surveyors also indicate that residents and families report a fear of retaliation from staff or other residents if issues of staffing or care are discussed with surveyors. Staff have also voiced the fear of losing their jobs if they discuss staffing issues with the survey team.

All of the following have had an impact upon the identification and citation of sufficient staffing by surveyors: this perceived increase in staff during the survey; the focus of the survey protocol in relation to resident care, services and outcomes; the limited amount of time available to complete the survey tasks, determine compliance and document the deficient practices; and the lack of definitive guidance about how to review for sufficient staffing.

Because the regulatory language does not provide for determining sufficient staff based on an acuity based case-mix level, or a minimum staffing ratio, (except for the RN and licensed nurse coverage), the surveyor must be able to correlate negative findings based on the observations, interviews and record reviews with a determination that insufficient staffing led to a resident(s) not having received appropriate care or treatment.

4.6 Quantitative Analysis of Staffing Deficiencies

4.6.1 Purpose

This descriptive analysis will look at the pattern of citation for staffing deficiencies. It will attempt to determine if the July 1, 1999, SOM changes have had an impact on the rate and pattern of staffing citations.

There are several reasons to hypothesize an increase in the rate of staffing deficiencies by surveyors. First, the widespread news coverage of alleged staffing problems in nursing homes, including a November 3, 1999, Senate Special Committee on Aging forum, might have sensitized some surveyors to cite staffing when they might not have otherwise. Second, the July 1, 1999, SOM changes, described above, would have *required* surveyors to employ a new investigatory protocol for potential staffing problems when quality of care problems are identified; previously, this type of investigation was not required.

Apart from any expected increase in the rate of staffing deficiencies, we would also hypothesize that the SOM changes would have led to better documentation and support for staffing deficiencies. Hence, we would expect an increase in the scope and severity of staffing citations, apart from any increase in

the rate.

4.6.2 Data Sources - OSCAR

The source of data for this analysis of staffing deficiencies is HCFA's Online Survey and Certification Reporting system (OSCAR), an administrative data set. This system has information from the State surveys of all certified nursing facilities in the U.S. Although we have good reason to suspect the accuracy of the OSCAR reported staffing levels (see Chapter 7), there is no reason to doubt that the official surveyor findings, apart from any consideration of justification, are reported accurately.

There are two components to this analysis. The first examines staffing deficiencies cited prior to the July 1, 1999, SOM changes related to staffing. (These survey guideline changes are discussed above.) For this analysis of staffing citations made prior to SOM changes, all current surveys before July 1, 1999, were included in the sample. Ninety-eight and a half percent of these surveys were conducted during the 12 months period between July 1, 1998, and July 1, 1999. The second component examines the pattern of staffing citations after the official July 1, 1999, implementation of the SOM changes, although it should be noted that data for surveys conducted after HCFA made changes to the SOM are limited. (A few States did not implement the SOM changes until around October 1, 1999.) OSCAR data available for this analysis was collected from October 1 through December 31, 1999. Although this 3-month period is too brief an interval with too few surveys to indicate potential changes at the State level, it should be sufficient to indicate any national change that may be due to the SOM changes. Fortunately, we have no reason to believe that there is any seasonal pattern to citation rates or patterns.

4.6.3 Analysis Questions

The analysis addresses several questions about nurse staffing citations:

1. What is the citation rate for staffing? Are there major differences in this rate among the States?
2. Has the citation rate for staffing increased since the SOM changes were implemented?
3. Has the scope and severity of staffing citations changed when comparing citations made prior to and following the implementation of SOM changes?

4.6.3.1 Nurse Staffing Citation Rates Made Prior to July 1, 1999, SOM Changes

The staffing citation rate is considered to be the rate at which either deficiency F353 (sufficient staff) or F354 (registered nurse), or both, is cited. Tag F354 is rarely cited without tag F353 being cited, and

the number of F354s cited in each State is small. An analysis of current Standard Surveys conducted before July 1, 1999, (Prior to SOM changes) revealed that 7.2% of facilities were cited for staffing deficiencies at F353 or F354 (see table 4.1). There is large variation in the rate at which States cite facilities for staffing deficiencies. Florida, for example, cited 15.4% of the 619 facilities surveyed during this period while Pennsylvania cited only 1.6% of the 640 surveyed facilities. Across the States, citation rates range from 0 to 15.4 percent.

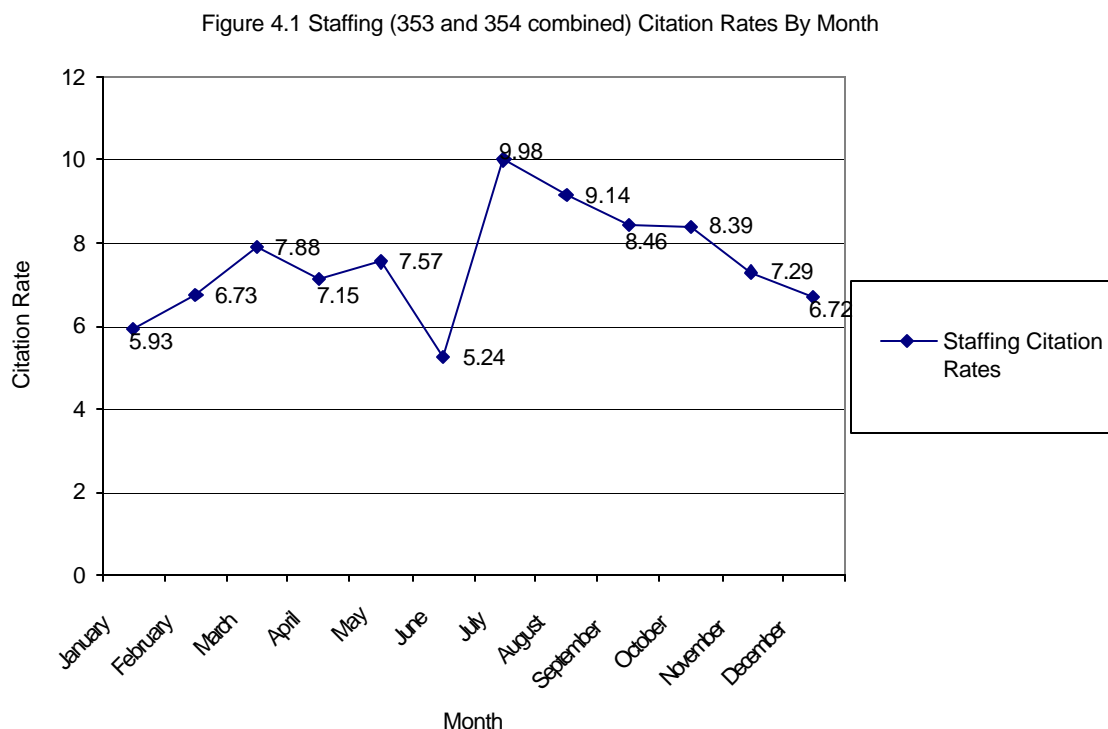
State	All Facilities	Staffing Citation 353	Staffing Citation 354	Staffing¹ Citation	% Staffing Citation
AK	12	0	0		0.00%
AL	206	21	0	21	10.19%
AR	257	10	2	12	4.67%
AZ	153	6	2	8	5.23%
CA	1347	86	12	98	7.28%
CO	160	1	1	2	1.25%
CT	212	0	0		0.00%
DC	19	1	0	1	5.26%
DE	39	4	0	4	10.26%
FL	619	91	4	95	15.35%
GA	289	21	0	21	7.27%
GU	1	0	0		0.00%
HI	41	1	0	1	2.44%
IA	391	23	1	24	6.14%
ID	68	4	1	5	7.35%
IL	777	48	11	59	7.59%
IN	501	51	12	68	13.57%
KS	319	14	9	23	7.21%
KY	262	21	0	21	8.02%
LA	224	4	8	12	5.36%
MA	327	7	1	8	2.45%
MD	156	3	0	3	1.92%
ME	101	6	1	7	6.93%
MI	428	48	5	53	12.38%
MN	312	17	13	30	9.62%
MO	433	44	3	47	10.85%
MS	163	10	1	11	6.75%
MT	84	6	0	6	7.14%
NC	309	21	0	21	6.80%
ND	79	4	0	4	5.06%
NE	169	3	2	5	2.96%
NH	48	5	0	5	10.42%
NJ	193	3	0	3	1.55%
NM	59	8	1	9	15.25%
NV	42	4	0	4	9.52%
NY	429	1	0	1	0.23%
OH	779	59	16	75	9.63%
OK	300	8	18	26	8.67%
OR	126	11	0	11	8.73%
PA	640	10	0	10	1.56%
PR	7	1	0	1	14.29%
RI	78	0	0		0.00%
SC	163	8	3	10	6.13%
SD	98	6	0	6	6.12%
TN	282	12	5	17	6.03%
TX	990	66	19	85	8.59%
UT	68	3	0	3	4.41%
VA	196	9	0	9	4.59%
VI	1	0	0		0.00%
VT	22	1	1	2	9.09%
WA	262	17	0	17	6.49%
WI	330	18	0	18	5.45%
WV	116	0	1	1	0.86%
WY	34	3	0	3	8.82%
Totals	13721	829	153	986	7.19%
¹ Staffing Citation is all facilities that received a 353 or 354 citation					

4.6.3.2 Nurse Staffing Citation Rates After SOM Changes--Has the Rate Changed Since the Changes in the SOM Were Promulgated?

An analysis of current standard surveys conducted after October 1, 1999, (after SOM changes) revealed that 7.5% of facilities received a citation for a staffing deficiency (see table 4.2). This is a modest increase from the Pre-SOM changes rate of 7.2%. Due to the small number of standard surveys captured in the Post-SOM changes, a State by State analysis is not meaningful for comparison to the Pre-SOM change period, but we do notice once again that there is large variation between States.

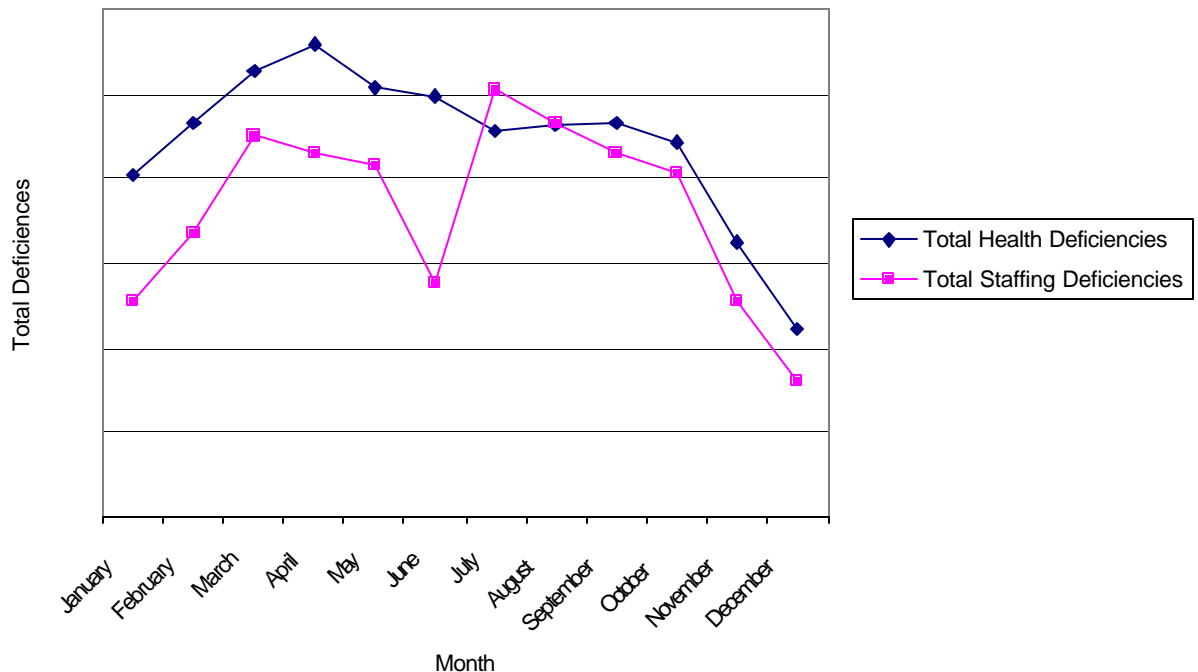
Table 4.2 Pre-SOM and Post-SOM Staffing Citation Rates By State						
State	PRE-SOM ¹			POST-SOM ²		
	All Facilities	Staffing Citation ³	% Staffing Citation	All Facilities	Staffing Citation ³	% Staffing Citation
AK	12		0.00%	6		0.00%
AL	206	21	10.19%	39	8	20.51%
AR	257	12	4.67%	20		0.00%
AZ	153	8	5.23%	10		0.00%
CA	1347	98	7.28%	178	15	8.43%
CO	160	2	1.25%	37		0.00%
CT	212		0.00%	43	1	2.33%
DC	19	1	5.26%			
DE	39	4	10.26%	3		0.00%
FL	619	95	15.35%	145	17	11.72%
GA	289	21	7.27%	48		0.00%
GU	1		0.00%			
HI	41	1	2.44%	7	1	14.29%
IA	391	24	6.14%	43	2	4.65%
ID	68	5	7.35%	13	6	46.15%
IL	777	59	7.59%	147	15	10.20%
IN	501	68	13.57%	105	11	10.48%
KS	319	23	7.21%	44		0.00%
KY	262	21	8.02%	65	3	4.62%
LA	224	12	5.36%	66	4	6.06%
MA	327	8	2.45%	47	4	8.51%
MD	156	3	1.92%	3		0.00%
ME	101	7	6.93%	23		0.00%
MI	428	53	12.38%	98	13	13.27%
MN	312	30	9.62%	68	5	7.35%
MO	433	47	10.85%	62	5	8.06%
MS	163	11	6.75%	33	7	21.21%
MT	84	6	7.14%	23	1	4.35%
NC	309	21	6.80%	74	5	6.76%
ND	79	4	5.06%	21		0.00%
NE	169	5	2.96%	39		0.00%
NH	48	5	10.42%	12		0.00%
NJ	193	3	1.55%			
NM	59	9	15.25%	20		0.00%
NV	42	4	9.52%	5		0.00%
NY	429	1	0.23%	44		0.00%
OH	779	75	9.63%	139	6	4.32%
OK	300	26	8.67%	1		0.00%
OR	126	11	8.73%	28	3	10.71%
PA	640	10	1.56%	26	2	7.69%
PR	7	1	14.29%			
RI	78		0.00%	11		0.00%
SC	163	10	6.13%	18		0.00%
SD	98	6	6.12%	10	1	10.00%
TN	282	17	6.03%	57	3	5.26%
TX	990	85	8.59%	161	14	8.70%
UT	68	3	4.41%	17	1	5.88%
VA	196	9	4.59%	24	1	4.17%
VI	1		0.00%			
VT	22	2	9.09%	10	1	10.00%
WA	262	17	6.49%	52	6	11.54%
WI	330	18	5.45%	23	3	13.04%
WV	116	1	0.86%	18	1	5.56%
WY	34	3	8.82%	8		0.00%
Totals	13721	986	7.19%	2194	165	7.52%
¹ Pre-SOM analysis contains most current surveys before July 1, 1999. ² Post-SOM analysis contains most current survey after October 1, 1999. ³ Staffing Citation is all facilities that received a 353 or 354 citation						

It is difficult to see any trends during 1999 in the rate at which nursing homes were cited for staffing (see figure 4.1). The staffing citation rate peaked in July at 10% (the same month the SOM was released) and then decreased in the remaining months of 1999. This rise might be attributed to the change in the SOM. It might also be due to increased scrutiny of surveyor actions, or might be due to changes in the SOM other than those directed at scrutiny of nursing home staffing. Nevertheless, subsequent survey findings reflect a decreased rate of citation, so any effect of the change in the SOM, if it does exist, appears to be transient.



Further analysis of monthly citation rates reveals that staffing citations tend to follow the same trend as all other deficiencies (see figure 4.2). For figure 4.2, total staffing deficiencies were standardized to the same scale as total health deficiencies (all deficiencies other than F353 or F354) in order to compare trends. The distance between the two lines gives some indication of the ratio of staffing deficiencies to all other deficiencies. After July, it appears that the ratio of staffing deficiencies to total deficiencies is larger (see figure 4.2).

Figure 4.2 Total Health and Staffing Deficiencies By Month (1999)
(Standardizing Total Staffing Deficiencies to Compare Trends)



4.6.3.3 Has the Scope and Severity Levels of Staffing Citations Changed?

In order to see if increased emphasis on staffing evaluation in the July revision to the SOM brought about changes in scope and severity of cited deficiencies, we compared the scope and severity levels for facilities in two groups: those with a F353 (sufficient staffing) staffing deficiency (Group 1) and those facilities without a F353 staffing deficiency (Group 2). We compared scope and severity levels in these two groups during two periods of time: before and after changes to the SOM were put forth (see table 4.3). In order to simplify the findings, we compared the proportion of deficiencies cited at G level (actual harm to an individual or isolated group) or above in scope and severity. Before changes to the SOM, 15.6% of the deficiencies cited in Group 1 facilities were at G level or above in scope and severity, while 8.3% of the deficiencies cited in Group 2 facilities were at G level or above in scope and severity. After changes to the SOM, 10.5% of the deficiencies cited in Group 1 facilities were at a G level or above in scope and severity, while 6.8% of the deficiencies cited in Group 2 facilities were at G level or above in scope and severity. The differences between the pre- and post-SOM change scope and severity distributions was statistically significant, using the Kolmogorov-Smirnov two-sample test, for both Group 1 ($p < .0001$) and Group 2 ($P < .0001$) facilities.

Table 4.3 COMPARISON OF GROUP1 AND GROUP2 PRE AND POST-SOM ON SCOPE AND SEVERITY								
Scope and Severity	PRE-SOM				POST-SOM			
	% Group1	Cumulative % Group1	% Group2	Cumulative % Group2	% Group1	Cumulative % Group1	% Group2	Cumulative % Group2
A	0	0	0	0	0	0	0	0
B	9.4	9.4	14.5	14.5	8.6	8.6	10.2	10.2
C	9.5	19	10.5	24.9	11.7	20.4	10.8	21
D	40.3	59.3	45.3	70.3	46.9	67.3	49	70
E	23.3	82.6	19.4	89.6	19.8	87	21.2	91.2
F	1.8	84.4	2.1	91.7	2.5	89.5	2	93.2
G	11.6	96	7.7	99.4	8.6	98.1	6.3	99.5
H	2.8	98.8	0.4	99.8	0.6	98.8	0.3	99.8
I	0	0	0	99.8	0	0	0	0
J	0.6	99.4	0.1	99.9	0	0	0	99.9
K	0.6	100	0.1	100	0.6	99.4	0.1	100
L	0	0	0	100	0.6	100	0	100
GROUP1: Only facilities with a 353 staffing deficiency								
GROUP2: Facilities that have a health deficiency, but do not have a 353 staffing deficiency								

In summary, a higher proportion of deficiencies in Group 1 facilities (those cited for staffing) were placed at G level or above than in Group 2 facilities. Both groups experienced a statistically significant decrease in the proportion of deficiencies placed at G level or above after changes in the SOM, but the rate of decrease is actually higher among Group 1 facilities than among Group 2 facilities.³

4.7 Qualitative Analysis of Staffing Deficiencies

4.7.1 Sample Selection for Content Analysis of HCFA Form 2567

Although the quantitative analysis of deficiencies provides one measure of surveyor performance, it does not provide direct information regarding the reasons why surveyors cite or do not cite staffing deficiencies. The purpose of this qualitative analysis is to analyze the reasons and documentation that surveyors provide when citing staffing and completing HCFA Form 2567. Of course, direct questioning of surveyors would have provided an important complement to this analysis. Interviews with surveyors could not only ask why they cite, but could explore perhaps a more important question that cannot be examined with the 2567s - their reasons and circumstances for not citing staffing when it

³ Staffing deficiencies also can be generated by complaint survey. The On-line Survey Certification And Reporting (OSCAR) system was queried regarding complaint surveys resulting in citation of staffing deficiencies between July 1, 1998, and June 30, 1999. A very limited review of a sample of information available regarding the staffing deficiencies cited during those complaint surveys reflects that approximately 63% of the deficiencies were cited as posing a potential for more than minimal harm and 26% were cited as having been actual harm to the residents. In 46% of the complaint surveys reporting staffing deficiencies, the facilities were also cited for staffing deficiencies during their annual Standard Survey. The content of the citations resulting from the complaint surveys was not reviewed.

might appear appropriate. Unfortunately, interviews with surveyors were not feasible for this Phase 1 Report.

The data base in OSCAR indicated that a total of 127,902 deficiencies were cited during the standard surveys of the 17,175 Medicare/Medicaid participating LTC facilities and that less than 1% (0.8%) of the deficiencies represented non-compliance with the staffing requirements.

Of this total of all regulatory cites, there were only 978 staffing deficiencies, of which 829 were cited at 42 CFR 483.30 (a) (1)(i)(ii) and (2) (F353, sufficient staff) and 149 were cited at 42 CFR 483.30 (b)(1)(2)&(3) (F354, registered nurse.)

To obtain a sample of HCFA 2567 forms for review, a file listing of standard surveys was extracted from OSCAR on July 15, 1999. (These standard surveys were conducted by the SAs. The SAs are geographically assigned to one of ten HCFA Regional Offices located across the country). The data set was limited to staffing deficiencies, cited between June 1998 and June 1999 for 42 CFR 483.30 (a) (1)(i)(ii) and (2) (F353: sufficient staff) and 42 CFR 483.30 (b)(1)(2)&(3) (F354: registered nurse).

Using the following criteria, six 2567 forms were requested per each of the ten HCFA Regional Offices (n=60):

1. Deficiencies with the highest scope and severity.
2. The most current survey.

A total of thirty-nine HCFA 2567 forms were received: four from Region 1, three from Region 2, four from Region 3, six from Region 4, six from Region 5, one from Region 6, three from Region 7, three from Region 8, six from Region 9, and three from Region 10. Since this number of 2567's was sufficient to conduct the analysis, no further requests were made to the Regions for additional 2567 forms.⁴

4.7.2 Review Process and Criteria Used to Review Deficiencies

A sample of deficiencies written regarding lack of sufficient staff or lack of registered nurse staff, was reviewed to compare the regulatory language with the content of the deficiencies as written to determine what types and extent of evidence were used to cite deficient practices and to determine if the provider's corrective action plan addressed the sufficiency of staff or scheduling of RN staff. Criteria were developed for review of the individual citations as well as review of the facility's plan of correction

⁴ Some States have established a minimum for staffing ratios and/or acuity based case mix staffing requirements. Surveyors may have issued a lack of sufficient nursing staff only under the State authority, rather than utilizing the Federal requirements for staffing. Thus, there could have been more issues and/or concerns with staffing on surveys conducted during that time period of sampled deficiencies, however, the Federal data system would have no way to capture such information.

(POC) responding to the deficiencies. After criteria about the nature and effectiveness of the information contained in the 2567 form were developed, the review was conducted by two HCFA RNs with significant background in the LTC survey field.⁵ In an attempt to assure inter-rater reliability for determinations about the nature of the information contained on the 2567 forms, the two RNs discussed the interpretation of the criteria and together reviewed 25 of the 39 HCFA 2567 forms with staffing deficiencies. Each of the two RNs independently reviewed 14 of the 2567 forms. They then compared their findings for those fourteen 2567 forms and achieved consensus. Thirty-four of the 2567 forms contained deficiencies cited at F353 regarding sufficiency of staff. Six of the 2567 forms contained deficiencies cited at F354 regarding lack of RN staff. (One of the 2567 forms contained a citation at both F353 and F354).

Criteria used to review the content of the citation included:

- C Sources used to determine that staffing was insufficient or not adequate (F353); or Sources used to determine that RN staffing was not adequate (F354).
- C Whether the 2567 form provided documentation of negative resident outcomes.
- C Whether the 2567 form identified the facility staffing level as related to the resident census and care needs.

Criterion used to review the content of the POC included:

- C What corrective actions were planned/provided to correct the deficiency

4.7.3 Documentation of Nurse Staffing Deficiencies at F353: Sufficient Staffing

Of the 34 deficiencies reviewed at this citation, 13 identified the care needs of the residents, identified aspects of the care that were not provided, and that the lack of care was because of a lack of sufficient staff to provide the care as corroborated by observations and interviews with residents/family and staff. About 60% of the 2567 forms left it to the reviewer to conclude that negative outcomes had occurred as a result of insufficient staff.

4.7.3.1 Sources Used to Identify a Deficient Practice

⁵ Both nurses have had previous experience in long term care settings, and both were previously employed in State survey agencies as surveyors of long term care facilities for 11 years and 13 years respectively. In addition, one of the nurses was a State Survey Supervisor for more than seven years with the responsibility of reviewing deficiencies.

The findings recorded in the 34 deficiencies of sufficient staffing contained either one or a combination of the following sources: direct observations of care provided or care needed and not provided, record review noting a resident's decline or failure to improve or services not provided, interviews with residents, family, resident council and staff or reviews of the staffing schedules.

The following example of a deficiency illustrates that the surveyors were able to acquire an extensive amount of information, but evidence to this extent frequently will not be available and not all sources or this extent of information are required to substantiate a deficiency:

I. Resident characteristics:

During an interview with the day Registered Nurse (RN) Supervisor on ... at 2:05 p.m, she stated there were 25 residents on 2nd floor and 24 residents on 3rd floor. The RN Supervisor was responsible for care of the residents on...(both) floors and supervision of all floor staff. There were 9 residents on 2nd floor on ventilator life support full time and an additional resident on ventilator life support only at night. There were 17 residents on 3rd floor with diagnoses of persistent vegetative state. She stated there were 22 residents on 2nd floor [who] received nutrition by gastrostomy tube (g-tube) feeding and 4 on 3rd floor receiving nutrition by g-tube. There were 5 residents on 2nd floor and 1 resident on 3rd floor receiving intravenous antibiotics that could only be administered by a RN.

II. Resident interviews: (Note: Deficiency documentation revealed that six residents were interviewed, however, only three examples are provided for this excerpt.)

1. Resident....was interviewed at 2:35 p.m. in his room on 3rd floor. The resident stated he needed a 2-person transfer to get out of bed and into his wheelchair. The resident stated sometimes there weren't enough staff to help him transfer. The resident stated he had waited as long as 20-30 minutes to get the assistance he needed to transfer from bed to his wheelchair. The resident stated that when this happened, he would be late for meals and therapy. Therapy was very important to him, "I'm very annoyed when I don't get therapy. Therapy is paramount to me." The resident stated he lets staff know when he is annoyed. The resident went on to say there was a "chronic staff shortage of nurses and CNAs (certified nursing assistants). [The] nurses have to help the CNAs and everyone does a job they aren't hired for." The resident stated there were usually 2 CNAs on the floor, but often times at evening and night, there is "only 1". The resident stated there was 1 nurse to give medications and he could get his medications as late as a "couple of hours." The resident stated he liked his morning medications 1 to 1½ hours before he gets up "so I am not jumping out of my chair [wheelchair] with muscle spasms. I need my muscle relaxants"

before getting out of bed...

2. Resident ...had a tracheostomy and was on a ventilator, but could answer yes/no questions by head shakes and nods and could mouth words. Resident...was interviewed on ...at 9:25 a.m. in her room on 2nd floor. Resident ... indicated she would sometimes lay wet in bed for sometimes an hour, 2 hours and/or 3 hours once or twice a day. When asked if staff come in and check on her, she made a face and shook her head. When asked if she would like them to look in on her, she nodded her head. When asked if staff come quickly when she turned on her call light she shook her head no. The resident indicated it could take up to one hour, but never 2 hours for the call light to be answered. The resident indicated the staff will come in, turn off her call light, tell her they will be back and then not come back. Resident ... indicated she did not always get her medication on time. She indicated her medication was usually late in the evening and night, but not during the day...

3. Interviewable resident ...was interviewed...at 1:10 p.m. in his room on 2nd floor. Resident...has quadriplegia and is ventilator dependent. He stated there was “no help.” He stated evenings were bad but nights were worse, and the people they do have they ‘work them to death.” He stated he did not get his medication on time 4-5 times a week and he would get muscle spasms if his medication was not given on time. Resident... said it was “scary at night”. He stated he didn’t “know if they are going to have enough help to answer call lights or your alarms. I timed them one night and it took them (staff) 28 minutes to answer my call light.” He stated that he used his “call light at night” when he needed suctioning. “two minutes not being able to breathe is scary”, resident ... told the surveyor. He stated Saturday and Sunday were the worst days for the facility not having enough staff...

III. Family interviews: (Deficiency documentation contained 5 interviews with family, however for this excerpt, only 3 are included.)

1. The family of resident ...asked to speak to the surveyor and an interview was conducted on ...at 4:30 P.M. The family member (stated) she visited the resident daily. She stated that 4-5 times a week she would find the resident’s incontinent pads “very saturated” with urine. She also stated the pillows used for positioning were not being consistently used. The family member stated she bathed the resident daily. The family member stated she was concerned about the positioning pillows because she did not want the resident to develop pressure sores. The family member stated sometimes in the evening the facility had 1 RN, 2 Licensed Practical Nurses (LPN) and 2 CNAs. 1 CNA orienting the 2nd CNA. The family member stated if she wasn’t at the facility, the resident would not get care. The family member questioned why she had to provide care when the facility got paid to provide care.

2. An interview with the family of a sample resident was held on ...at 12:00 noon. The family member stated the staffing was “horrendous” on the weekends. The family member stated that members of the family visited the resident on a daily basis. The family member stated the first weekend the resident was in the facility, the family found the resident to be lying in urine and feces. The family member stated the resident’s perineal area was “red with rash, just like a baby has”. The family continued that the area was still red on ... and was bleeding from the rash three weeks prior. The family member stated “I figured out right off, I had to tell staff when to change [the resident]. The family member stated family had to tell staff when to get the resident up, reposition the resident and when to check the resident’s pads for incontinent episodes. From ...the family found on four weekends the resident was without positioning devices for the extremities. The family member stated the family performed range of motion on the resident’s feet because staff “won’t do it.” The family member stated the family begged staff to perform range of motion on the resident’s feet, “I tell them I’ll pay them” to perform the range of motion. The family member stated “staff never reposition [the resident] in chair [wheelchair], I do.’ The family member stated staff, “never come in and roll the resident from side to side.” Occupational Therapy did an up-down schedule for the resident in the room and they have never followed it, never, not once. The family member stated the weekend of ..., the family member found the resident to be lying in feces in bed when the family arrived for the visit at about 11:30 a.m. The family member asked how many patients the licensed nursing staff had to take care of, [and] the licensed nursing staff stated 28. The family member stated that during the second weekend of ..., family asked a staff person to change the resident and the staff person told the family member [he/she] was too busy. The family stated the family had taken their complaints to the Nursing Home Administrator (NHA) and had been told by the NHA to tell the staff they have to do it. The family interview was confirmed by record review.

3. An interview was conducted with the family of a sample resident on ... at 10:30 a.m. The family member stated the facility was understaffed most of the time. The family member stated that family members have been in the facility everyday. The family member stated the resident had been outside the facility with the family and when the family brought the resident back inside, the bandages on the resident’s wounds were dripping and were wet with pus. The family could not remember the exact date, but stated she asked the licensed staff to change the bandages. The licensed staff told the family [he/she] couldn’t change the dressing because [he/she] had to pass medications. A family member stated on ... at 3:30 p.m., that “I have to ask to have it done” referring to wound care on weekends....The family member stated the resident did not get mouth care if it was not provided by the family. The family member stated, “a couple of weeks ago, a CNA told the family “we didn’t have time to clean [the resident’s] mouth. ...

IV. Staff interviews: (Deficiency documentation revealed 7 interviews, for this excerpt only 4

interviews were included.)

1. An employee who worked the night shift (11 p.m. - 7:00 a.m.) stated she had worked as the only CNA on the night shift on 2nd floor 10-12 times since..... The CNA stated she had been the only CNA in the building when other assigned CNAs had not come to work. She stated that when that happened, “I just do the best I can.” When asked if she could change and reposition people every two hours by herself, she stated, “we can’t do it every two hours - no way...”
2. An interview with the day RN supervisor was conducted.....She confirmed that on occasions when she came in to work at 6:30 a.m., there would be only 1 CNA on the night shift for the entire facility. She said it usually happened on the weekends.
3. (An interview with day nursing staff on the 2nd floor).....The nurse stated wound care was a problem, that the pressure sores weren’t healing, they were increasing in size and the stage level was increasing...
4. (Interview with the evening charge nurse on the 3rd floor) When asked about the frequency of pressure sores, “I’ve seen a few have been added on”. She added she felt the increases “were because they weren’t being turned.” The nurse went on to say regarding resident.....”when he came in they said he had what was an abrasion. Now it looks like it is rotting. It’s quite a bit bigger. I think it is because he isn’t turned.”

V. Observations: (observations were dispersed throughout the deficiency including care observations and observations of staff present in relation to staff scheduled.) Examples of staffing observations are as follows:

Documentation in the deficiency revealed the use of “corporate staff” who were “answering call lights and doing wound treatment as well as repositioning residents”. It was documented that facility “Staff were overheard to say they had not had the opportunity to take their scheduled breaks even with increased assistance with additional agency LPNs and 2 corporate RNS.” “Interviews with multiple nursing staff revealed corporate RNs were “never” onsite during the weekends.

VI. Record Review:

Documentation in the deficiency revealed information regarding staff scheduled, a review of time sheets and a roster of agency staff utilized. The documentation included interviews with the director of nursing regarding the numbers of staff routinely scheduled to meet the needs of the residents. The documentation also included records indicating the times when this amount of staff

was not in the facility, and when there were not sufficient numbers and/or licensed nurses in the facility.

Although the above deficiency is substantiated by an exhaustive amount of evidence utilizing an extensive number of sources, there is no minimum number of sources required to substantiate a deficiency. Surveyors are instructed to incorporate into their documentation a variety, if possible, of data sources necessary to clearly demonstrate how the facility failed to meet the requirement. In some cases, information found at other tags provides additional evidence of insufficient staff. The following examples demonstrate the use of these methods:

“Based on review of staffing records, observation, and staff and family interview, it was determined that the facility failed to provide sufficient staff and nursing to meet the resident needs. ...Findings include:

1. On ... and ... records showed that there was only one licensed nurse and one nurse aide on duty for the entire night shift, to care for 41 and 45 residents respectively. This was confirmed by interview with administrative staff on the afternoon of ... Administrative, professional and unlicensed staff, at various times throughout the survey days of ... stated that choices in care had to be made as there was not sufficient staff to do everything the residents needed.
2. Family and random resident interviews conducted on ... and ... revealed that resident needs were not being met as evidenced by lack of sufficient bathing to prevent body odor, shaving not being done regularly, therapy treatments not being provided as ordered, and general lack of staff ability to provide care in a timely manner. It was further stated that restorative and bath personnel were often taken away from assigned duties due to lack of adequate staff to provide care. Refer to F311 and F312 as they relate to the facility’s failure to provide appropriate treatment and services and necessary care to maintain grooming and hygiene.”

An excerpt of the deficiency at F312 contained the following information that linked the lack of provision of care to the lack of staffing:

“Review of medical records revealed that prior to ..., care plans routinely stated “give shower/bath as scheduled two times weekly.” Further review showed that Residents ... were not given baths or showers two times weekly as care planned. After ... the bathing schedule was changed to read “baths will be given as scheduled.” Review of the current bath schedule revealed that baths were now planned for once a week. The revision was not based on individual need, but appeared to be an attempt to make sure that the number of baths given matched the care plan. In an interview with administrative staff on the morning of ..., the staff stated that care choices had to be made because of lack of staffing. Staff indicated that when there was insufficient staff for both bathing and feeding residents, baths were not given. On both days of the survey, additional staff members confirmed in informal statements that there was often not enough staff to get everything done as it was supposed to be done.

Another excerpt of a deficiency at F353 reviewed provided information obtained from another source, the Resident Group Interview. For example:

“During the Resident Group Interview, 4 of 7 alert and oriented residents voiced statements regarding the facility being short staffed. One member of the group stated, “When we call for help, we are told we have to wait for the next shift of CNA’s to come in because they are short handed.” Another member of the group stated, “on Sundays there is not enough help, call lights aren’t answered.” Another member of the group stated, “You have to talk loud to get someone’s attention. Call lights aren’t answered.” Another member of the group stated she, “Wet in her pants because not enough nurses.” The residents at the group meeting expressed their concerns and fears at the repeated statements made by the nurse aides regarding the lack of staff and their inability to provide care in a timely manner. The residents stated they were frustrated that they were made to wait for staff assistance and told they had to “Be patient because they were short handed.”

Table 4.4 reflects the number of sources identified on the 2567 forms as providing evidence of insufficient staff. Surveyors may have used one or more of these sources in a particular deficiency.

Table 4.4 Sources providing evidence of insufficient staff.	
<i>Source</i>	<i>Number of 2567s out of 34 reviewed</i>
Resident Council Group interview	11
Individual Resident interview	11
Family interview	10
Record review	3
Staff interview	15
Observation	11
Staff working schedule	15
Resident census	6

4.7.3.2 Sequelae Documented as a Result of Insufficient Staffing

The regulatory requirement addresses sufficiency of staff in terms of meeting the residents’ needs. In some of the HCFA 2567 forms, the impact of insufficient staffing upon residents was documented at the

specific requirements to provide care or at the requirements addressing the outcomes of care. In some of the 2567 forms, the care outcomes were reported within the deficiency cited at F353 regarding staffing. Frequently surveyors seem to find it easier to document negative sequelae in the area of physical care rather than in the areas of psychosocial functioning and quality of life, as noted in the array of outcomes documented or associated with the citations reviewed.

Table 4.5 indicates the number of 2567 forms documenting negative outcomes or services not provided as identified either at F353 or as a deficiency cited at a specific care requirement.

Table 4.5 Number of 2567 forms documenting services not provided or negative outcomes identified either at F353 or as a deficiency cited at a specific care requirement	
<i>Service not provided or negative outcome</i>	<i>Number of 2567s out of 34 reviewed</i>
Failure to maintain or attain highest practicable functional abilities in Activities of Daily Living(ADLs)	8
Lack of assistance or supervision to maintain grooming and hygiene	14
Development of pressure ulcers	11
Residents observed or complaints of soiling themselves or being incontinent	16
Lack of assistance to eat or be fed	16
Lack of timely response to call bells	20
Lack of protection from accidents	6
Lack of supervision to prevent wandering into rooms of other residents or outside the building	9
Late administration of medications/treatments/poor technique	7
Up too early in the morning/left in bed for extended periods of time/put to bed too early in the evening (lack of resident choice)	6
Lack of hydration	3
Lack of repositioning/range of motion (ROM)	8

4.7.3.3 Determination Of The Level Of Staffing And That Staffing Was Inadequate

The deficiency review revealed that the level of staffing the facility provided was not always compared to the residents' needs or care required. When staffing numbers were addressed, the documentation revealed the use of several sources including a review of the facility's working schedule and staff interviews to determine what staff were provided. In 15 of the 34 deficiencies reviewed, the documentation of the determination of the level of staffing included evidence of a review of the facility's working staffing schedule for the nursing department; in the majority of reviewed deficiencies this evidence was not provided.

In 19 of the 34 deficiencies reviewed, staffing levels were not discussed in the deficiency findings, and the numbers of staff present, shift or time of day evaluated were not identified.

In addition, the deficiency did not reflect the deployment of staff to a particular area or assignments of the licensed nurse(s) and/or nursing assistants. The findings did not correlate the numbers of staff assigned to the effect upon meeting the residents' needs or provision of care.

In two 2567 forms, the documentation reflected utilization of State mandated ratios of staff to residents as a determination for sufficient staff. As some States have licensing rules relating to a minimum ratio or acuity based case mix ratio, the documentation on some deficiencies reflected that the facility did not provide a certain number of staff, based on the State's licensing ratio. The Federal regulations do not require a specific ratio of staff to residents or an acuity based case mix ratio.

4.7.3.4 Facility Plan of Correction (POC) to Address Deficiency

There were no POCs available for review for ten of the thirty-four 2567 forms reviewed for tag F353 (sufficient staffing). Of the remaining 24, only 11 POCs identified that the facility would hire or add more staff. In 16 of the 24 deficiencies with a POC reviewed, the facility indicated that education for staff in meeting residents needs would be provided, and that staff monitoring would be provided to assure that the needs of the residents were met.

Following are two examples of POCs which did not include increased staffing levels as a corrective action:

Example #1:

1. The Director of Nursing and the Assistant Director of Nursing will ensure facility is staffed to meet the residents' needs.
2. Nursing will interview residents to determine how we can better meet their needs.
3. Night shift is to assist the residents who desire to get up early. Inservice nursing to communicate

findings and ensure residents' needs are being met.

4. Monitored by DON & ADON.

Example #2:

“The facility does provide sufficient nursing staff to provide nursing and related care. There were no specific residents to be found affected by the deficient practice. Other residents who could be affected will be identified by the director of nursing or designee to be present at the newly formed monthly nursing/resident meeting for a round table discussion as referenced to in tag F241. At the monthly resident council meeting a patient satisfaction survey will be conducted so that facility staff may obtain timely feedback regarding resident satisfaction with various services particularly those mentioned in tag F353”.

Table 4.6 reflects corrective actions identified by the facility in response to the staffing deficiency

Table 4.6 Corrective actions identified by the facility in response to the staffing deficiency (Plans of correction were available for review only 24 of the deficiencies involving insufficient staff)	
<i>Corrective action</i>	<i>Number of plans of correction out of 24 reviewed</i>
Increased staffing	11
Monitoring/supervising of staff	16
Inservice training	16
Periodic review of resident satisfaction	6
Reallocation/redeployment of staff	8
Rebuttal/denial of lack of staffing	8

The analysis for this chapter did not include a review of subsequent information to determine that the deficiencies were corrected.

4.7.3.5 Determination of Scope and Severity

In a review of the 34 deficiencies cited at F353 (sufficient staff), two of the deficiencies were identified as an “isolated” scope (limited area of the facility affected), 22 of the deficiencies were identified as “pattern”, indicating more than one area of the facility was involved, and 10 of the deficiencies identified the lack of staffing as widespread affecting the entire facility. In addition, 6 of the 34 deficiencies were

identified in the severity level of “immediate jeopardy”. These deficiencies identified that there was such insufficient staff that it placed the residents in serious threat to their health and safety. Four of the six deficiencies in the area of immediate jeopardy were at a scope of “pattern” affecting more than one area in the facility and the other two deficiencies were at a scope of widespread affecting the entire facility.

4.7.3.6 Conclusion for F353 (Sufficient Staff)

In conclusion, the analysis of the deficiencies cited at F353 (sufficient staff), revealed that in order to substantiate insufficient staff, a surveyor must conduct an extensive investigation to determine that deficits in the delivery of care or in the failure to maintain or achieve the highest practicable level of functioning are directly attributable to insufficient staff. This involves utilizing multiple sources to provide supporting information for the determination of non-compliance. This type of investigation is required during a survey process where time constraints are in place, and where the decision of citing the sufficient staff tag is left to the judgement of each surveyor/team.

4.7.4 Documentation of Nurse Staffing Deficiencies Sited at F354: Registered Nurse

This analysis is for 42 CFR 483.30(b)(1)(2)(3) (F354: Registered Nurse.) The regulation is specific as to numbers of RN staff required. (There are provisions for a waiver.)

In reviewing the six deficiencies cited at F354, the documentation in the 2567 forms revealed that determinations were made through a review of the staffing schedule and through interview with administrative staff (Administrator or DON or Assistant Director of Nursing (ADON)). Documentation indicates that the surveyors based their findings on a review of staffing schedules which varied from 14 to 76 days. There is no required amount of time to review for RN staffing, therefore, it is left to the discretion of the survey team based on findings that RN staffing was not or had not been provided. One 2567 form reflected a deficiency for failure to meet the conditions of the waiver for DON coverage. The remaining five deficiencies documented failure to provide eight consecutive hours of RN coverage seven days a week.

For one 2567, the plan of correction was not available for review. For the remaining five POCs, the following corrective actions were identified: three facilities plan to hire additional RN’s full or part-time; one facility plans to schedule a RN at least eight consecutive hours a day, seven days a week with administrative and Quality Assurance oversight; and the facility with a waiver planned to have the DON assume the position full time.

In conclusion, the determination of compliance with the requirements for Registered Nurse at tag F354 can be easily determined by surveyors. The citation is clearly defined due to the clarity and the

interpretation of the regulation. In reviewing staffing records/schedules one can readily extract the information necessary to determine compliance. Although a schedule reflects compliance with the RN requirement, there is still a need to ascertain whether the presence of a “RN at least eight consecutive hours a day, seven days a week,” is adequate. Although the specified minimum RN staffing requirements are met, based on the needs of the residents, additional RN staffing may be required.

4.7.5 Qualitative Analysis of Deficiencies Issued After SOM Changes

4.7.5.1 Documentation of F353 (Sufficient Staff)

A cursory review of a sample of deficiencies issued after the survey process changes in July 1, 1999, for F353 (sufficient staff) was conducted. As there were no regulatory changes made, the review of the deficiencies revealed that the documentation was similar to the previous review of deficiencies. Although training had been provided throughout the nation, and the survey process was enhanced to include an investigative protocol, there does not appear to have been a significant increase in the deficiency citations. At this time it is too early to make a determination of the effectiveness of the changes in the survey process.

4.7.5.2 Review of Plans of Correction

The citing of a deficiency for sufficient staffing doesn’t necessarily indicate that facilities will increase staffing. A sample of deficiencies for tag F353 was collected for surveys conducted after October 1, 1999. Of the 33 deficiencies reviewed for sufficient staffing, only 22 of the facility plans of correction were available for review. Of the 22 plans of correction, only nine revealed that the facility planned to add staff to come into compliance with the staffing requirement. Of the remaining 13 plans of correction, the facility plan was not to add staff, but to address the staffing issues by methods such as monitoring staff performance, or revising care delivery schedules.

4.8 Conclusion

Apart from the results of the quantitative analysis presented in Chapters 9 through 12, any recommendation regarding a minimum nurse ratio requirement will make explicit or implicit assumptions about how HCFA’s current nursing home nurse staffing (non-ratio) requirements are working in practice. As will be discussed in greater detail in Chapter 6, one of the difficulties in setting a minimum ratio requirement is that no analysis conducted to date has been able to derive appropriate minimums that adjust for differences among facilities in the acuity and functional limitations of their resident populations. Despite the absence of an accepted minimum nurse staffing ratio standard, surveyors must take residents’ needs into consideration when determining whether staffing is sufficient. Hence, it is important to assess how surveyors actually make this difficult determination based on the application of the regulation as written.

The evidence presented in this chapter raises serious doubts as to whether surveyors can in fact make what appears to be a very difficult judgement - a judgement with a high burden of documentation which must be generated under demanding time constraints.

The purpose of this analysis was to determine how the current non-ratio requirements are being implemented and assessed. This analysis has also assessed the impact the July 1999 State Operations Manual (SOM) revisions which incorporated a staffing investigatory protocol may have had on the implementation of staffing requirements. To this end, the results of two analyses were presented: 1) an analysis of nurse staffing citations before and after the SOM changes; 2) an analysis of HCFA Form 2567, "Statement of Deficiencies and Plan of Correction" as they relate to the reporting of staffing deficiencies with some limited attention to the potential impact of the recent SOM changes.

The results of the analysis of nurse staffing citations are clear and unambiguous. The rate of staffing citations did not increase substantially after the July 1, 1999, SOM revision. The rate of citations before the SOM changes was 7.2% and increased slightly to 7.5% in the Post-SOM change period. However, the month-by-month rates in the Post-SOM change period indicate that the increase may have been due to transitory awareness of staffing issues in the first month following the release of the SOM change.

Although the rate of nurse staffing citations may not have changed, the scope and severity levels of the cited deficiencies potentially would have increased. This would seem to be a reasonable expectation given that the new SOM investigatory protocol mandates extensive surveyor investigation of staffing when quality of care problems have been identified. However, the analysis found that the percentage of staffing deficiencies cited at G level and above actually declined from 15.6% Pre-SOM change to 10.5% Post-SOM change, a decrease of 33 percent. It is important to note that the scope and severity level of non-staffing deficiencies also declined - from 8.3% cited at a G level or above Pre-SOM change to 6.8% Post-SOM change. Clearly, the data for the three month period following the full implementation of the new SOM investigatory protocol indicates that the protocol has had no impact on either the rate or scope and severity of nurse staffing deficiencies.

Although the quantitative analysis of deficiencies provides one measure of surveyor performance, it does not provide any direct information about the thought processes of surveyors in citing or not citing staffing. The qualitative analysis of a sample of HCFA 2567 forms revealed the type of documentation that surveyors provide when citing staffing. Although staffing may appear to be easy for surveyors to cite when there are real staffing problems, a close reading of HCFA's regulations and guidelines to surveyors reveals that surveyors must meet a very demanding criteria. To cite appropriately, surveyors must demonstrate that nursing care has not been provided to residents or lack of sufficient staff has resulted in failure to identify, implement and coordinate needed services. And all this must be documented during a relatively brief survey when surveyors have many other competing duties.

The analysis of the sample 2567 forms indicate the following:

- ! There has not been an emphasis on the review of staffing in the survey process, prior to July 1, 1999. Additional training on surveying for staffing is needed, particularly if HCFA does not mandate a minimum nurse staffing ratio.
- ! The regulatory language at F353 (sufficient staff) is very general and subjective and does not provide specificity for evaluating the requirement.
- ! Because the regulatory language for sufficient staff is directly related to the provision of care and services needed by residents, the investigation of staffing usually occurs toward the end of a survey after quality of care issues are identified. This places limitations on the investigation due to time constraints in completing the survey.
- ! Of the 34 deficiencies reviewed at F353 (sufficient staff), 13 identified the care needs of the residents, identified aspects of the care that were not provided, and corroborated by observations and interviews with residents/family and staff that the lack of care was because of a lack of sufficient staff to provide the needed care. About 60% of the 2567 forms left it to the reviewer to conclude that negative outcomes had occurred as a result of insufficient staff.
- ! It is true that F353 “sufficient staff regulations” refers to both numbers of staff and their qualifications. A deficiency concerning staffing should ordinarily provide examples of care deficits caused by insufficient quantity and quality of staff. (The identification of care problems need not be cited directly at F353 tag/requirement; but, could be incorporated into the evidence by having the documentation refer the reader to those tags at which deficiencies are cited about the care problems which could be resulting from lack of staff.) In general, this was not provided in the majority of 2567 forms reviewed.
- ! Facility Plans of Correction do not always provide for increased staffing. These plans often appear to be a declaration of good intentions rather than an effective plan. This fact, together with all the evidence presented throughout this Report of inadequate numbers of staff, does not yield confidence that the deficiencies would be corrected by the POC’s in which less than half require increased staffing. For this study, we collected no evidence for this analysis that bears on the question of whether these Plan of Corrections, real or otherwise, are indeed implemented.

In summary, this analysis of staffing citations and HCFA 2567 forms, both before and after the July 1, 1999, SOM changes incorporating the implementation of an investigative protocol, has yielded no evidence that surveyors typically meet the considerable burden of documentation required to determine compliance with the *general* requirement of sufficiency of nurse staffing based on the regulatory

language at F353 (sufficient staff). The added efforts to provide further guidance and training to surveyors with a mandatory investigatory protocol has had no effect.

There are, however, some important qualifications to this conclusion. Although the quantitative analysis of staffing citations was based on all citations incurred during the specified time period, the analysis of the content of staffing citations on the HCFA 2567 forms was based on a comparatively small sample of 34 deficiencies for F353 prior to July 1, 1999, and 33 deficiencies after July 1, 1999. In addition, the representativeness of these small samples is unknown, although we tried to get some regional distribution. Also, the limited project time to examine the Post SOM change forms only permitted a very cursory review, as was noted in the chapter. For all these reasons, the conclusion *from the examination of the HCFA 2567 forms* that surveyors typically do not meet the burden of documentation to appropriately cite the general requirement of sufficiency of nurse staffing is based on evidence that is tentative and far from certain. In contrast, there is much stronger evidence based on *all staffing deficiencies* supporting the conclusion that the staffing citations rate as well as the scope and severity levels have not changed as a result of the SOM changes. It is important to note that although 21 of the 34 deficiencies cited at F353 (sufficient staff) that were examined (62%) did not provide convincing evidence of a deficiency, 38% did meet the required high burden of documentation.

Any conclusion that a particular staffing citation is or is not justified must be based on the documented evidence provided for that given instance; no inference should be drawn from this study of a small number of HCFA 2567 forms. Indeed, given the evidence presented in Chapters 9 through 12 and Chapter 14 that many quality of care problems may be due to low nurse staffing, it can be argued that the current staffing citation rate of around 7% may be far too low. That is, the problem may be not one of inappropriate staffing citations, but failure to cite when in fact a citation on sufficient staffing may have been justified. Finally, the more important conclusion is that for a number of reasons, it is difficult for surveyors to determine compliance with the sufficiency requirement; hence, there may be a need for a specific minimum *ratio* requirement, adjusted for the acuity and functional limitations of the resident population that surveyors could assess in a manner similar to how they currently assess compliance with the current specific *nonratio* RN and licensed staffing minimum requirements. In contrast to the difficulty in determining compliance with the sufficiency requirement, the analysis conducted for this chapter indicates that when surveyors have a very *specific* requirement to enforce (e.g., the eight hours per day RN coverage), the determination of compliance is appropriate and less burdensome for surveyors.